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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,838	03/08/2004	Adil H. Attar		2488

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Adil Attar  
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EXAMINER

PECHHOLD, ALEXANDRA K

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/796,838	<b>Applicant(s)</b> ATTAR, ADIL H.	
	<b>Examiner</b> Alexandra K. Pechhold	<b>Art Unit</b> 3671	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 3/8/04.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) 1-4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-4, drawn to an apparatus assembly, classified in class 404, subclass 12.
  - II. Claim 5, drawn to a method of making an apparatus, classified in class 404, subclass 16.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by another and materially different process.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Adil Attar on December 7, 2005 a provisional election was made with traverse to prosecute the invention of Group II, claim
5. Affirmation of this election must be made by applicant in replying to this Office action.

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Claims 1-4 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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### ***Claim Objections***

5. Claim 5 is objected to because of the following informalities:

- “the apparatus” in line 1 lacks antecedent basis,
- “the means”, “the elements”, and “the core block’ in part a) all lack antecedent basis,
- “the x-axis”, “the inner cavity”, and “the reflective face portion” in part b) all lack antecedent basis,
- “the various standard elements” and “the assembly” in part c) all lack antecedent basis,
- the language “such as” in part c) should be removed since it is unclear as to whether or not these elements are necessary,
- the language “can” in part d) should be removed since it is unclear as to whether or not these elements are necessary,
- the method steps are confusing since they only recite “providing” certain elements, and the applicant should include the relationship between the parts or how the different “providing” steps relate to one another, since just “providing” parts does not encompass a method of making an apparatus.

Appropriate corrections are required.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Attar (US 6,579,036).** Attar '036 discloses a method of making a retro-reflective pavement marker, stating in column 8, lines 42-57 that the means to form the pavement marker is selected based on the shape of the marker desired, and the injection molding method utilized to make the marker. Attar '036 fails to specifically disclose providing a core block comprising at least three segments (a lower cubical block, inclined middle portion, and upper prismatic tooling segment), and providing a cavity block forming the reflective face portion. But Figs. 19 and 20 illustrate a marker that has a rectangular base portion, and inclined middle portion, and an upper prismatic portion, seen as the plurality of cube-corner reflective elements within a corresponding hollow cavity 68. Therefore, the mold that forms this marker must have a corresponding block or blocks that has/have a lower cubical block, an inclined middle portion, and upper prismatic tooling segment to form this shape of marker seen in Figs. 19 and 20. Inherently, one would provide the various standard elements necessary to complete assembly of the apparatus as applicant recites in step c). Step d) is disclosed in Attar '036 in column 8, lines 50-57, which states that the marker can be made of one or two colors. The claim does not require multi-plastic runners since the claim recites "can". It would have been obvious

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to one having ordinary skill in the art at the time the invention was made to modify the method of Attar '036 to include specifically providing a core block comprising at least three segments (a lower cubical block, inclined middle portion, and upper prismatic tooling segment), and providing a cavity block forming the reflective face portion, since the resulting pavement marker seen in Figs. 19 and 20 has the corresponding shape that would result from such a mold, and with respect to having both a core block and a cavity block, it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

### **Conclusion**

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (571) 272-6994. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (571) 272-6998. The fax phone number for this Group is (703) 872-9306.

  
**Alexandra K. Pechhold**  
**Patent Examiner**  
**Group 3600**

AKP  
12/7/05